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IN THE
Supreme Court of the United States

October Term 1970
No. 133

UNITED STATES OF AMERICA,

Appellant,

vs.

THIRTY-SEVEN (37) PHOTOGRAPHS, MILTON LUROS,
Claimant,

Appellees.

On Appeal From the United States District Court for the
Central District of California.

PETITION FOR REHEARING.

Appellees respectfully present this petition for a rehearing based upon the grounds which follow hereinafter.

1. The District Court below held: "Section 1305 is a system of censorship by customs agents and is barren of safeguards." (309 F.Supp. at 38). This Court does not disagree. Justice White in the majority opinion of the Court, states: "As enacted by Congress, § 1305(a) does not contain explicit time limits of the sort required by *Freedman*, *Teitel*, and *Blount*." (Slip Opinion, 4). The statute is therefore, on its face, plainly overbroad and clearly invalid under the First Amendment to the United States Constitution. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58; *Blount v. Rizzi*,

400 U.S. 410; *Aptheker v. Secretary of State*, 378 U.S. 500; *United States v. Robel*, 389 U.S. 258; *Freedman v. Maryland*, 380 U.S. 51.

Instead of declaring the law unconstitutional, and deferring to Congress the enactment of appropriate legislation, the Court chooses "to construe the section to bring it in harmony with constitutional requirements" (Slip Opinion, 5). This action appears contrary to this Court's usual reluctance to engage in the judicial rewriting of overbroad statutes. Ordinarily, when a statute is unconstitutional on its face, it is for the Congress to decide under our constitutional system whether to reenact the statute with the required safeguards. When the Court "rewrites" the statute, it in effect imputes to the legislature an intent to include what the Court believes to be constitutionally compelled limitations. It is submitted that it is more in keeping with the theory of separation of powers for the judiciary to declare a palpably invalid statute unconstitutional, leaving it to the Congress to decide whether, and in what form, the statute should be written and reenacted.

The judicial rewriting of §1305(a) is unjustified, it is submitted, and leads to an unconstitutional result. The chilling effect of the rewritten statute is as great as the statute enacted by Congress. Indeed, the "danger of abridgment of the right of the public in a free society to unobstructed circulation of nonobscene books" (*Quantity of Copies of Books v. Kansas*, 378 U.S. 205, 213) is intensified by the new legislation which the Court has written.

It is stated by the majority opinion that the reading into the section of the time limits which the Court has chosen to impose is "fully consistent with its legislative

purpose" (Slip Opinion, 6). With all deference, nothing in the legislative history of the law reflects an intent of Congress to permit the suppression of expression for a period of 74 days. The quotations from the Congressional record and the language of statutes such as 19 U.S.C. §§1602 and 1604 appear to reflect a deep aversion by members of Congress to any censorship by customs officials and a desire to leave determinations of obscenity solely to courts and juries. The emphasis is constantly on such words as "immediately report" and "prompt determination". There is nothing in the legislative history to justify a conclusion that books, films, photographs, and other media of expression, can be confiscated and suppressed for more than two months before a final judicial determination as to whether the material is constitutionally protected or not. The majority opinion states that the congressional debates never suggested inclusion of time limits, "perhaps because experience had not yet demonstrated a need for them" (Slip Opinion, 8). It is just as reasonable to suppose, perhaps more so, that time limits were not discussed because Congress believed that "immediately" and "promptly" meant exactly that. It cannot be seriously contended, it is submitted, that words like "prompt" and "immediate" are synonymous with a period of 74 days, especially where expression is being suppressed for such a lengthy time period. The statute as rewritten will not, it is submitted, ensure "the necessary sensitivity to freedom of expression which the First Amendment requires". (*Freedman v. Maryland*, 380 U.S. 51, 58)—and with which Congress was concerned.

The majority opinion states that including specific time limits does not require the Court "to decide issues of policy appropriately left to the Congress or raise other

questions upon which Congress possesses special legislative expertise" (Slip Opinion, 8-9). It is stated that, "We possess as much expertise as Congress" in determining the speed with which prosecutors and judges can be expected to function in adjudicating matters under the statute (Slip Opinion, 9). The issue here, however, is not the "speed" with which a prosecutor, court, or jury can act. The basic question is whether expression ordinarily protected by the First Amendment can be suppressed for a period of 74 days before judicial determination. That question, it is submitted, is initially a policy question which appropriately belongs with Congress. It is for Congress to decide in the first place whether suppression for such a period of time by the Customs Bureau and by prosecutors, judges and juries, shall be as extensive as this Court has imposed. Congress will want to hear not only from administrative officials, prosecutors and courts, but it will also want to hear from publishers, distributors, importers and counsel who are required to litigate these matters on their behalf. With deference, therefore, Congress possesses and will possess far more expertise in this ultimate determination of legislative policy than members of the judiciary.

It is indicative of the majority opinion's "angle of vision" that in selecting time periods it fails to adopt the shortest period of time between seizure and final judicial determination, as reflected in the cases, but apparently strikes a compromise position between cases which have sanctioned long delays and those which have sanctioned delays shorter than the period selected by the Court. This is done upon the assumption "that no undue hardship will be imposed upon the Government and the lower federal courts" by fixing 74 days

for the suppression period. It is also stated that the time does not seem "undue" for importers bringing "goods" into this country from abroad (Slip Opinion, 10). Thus, the principal concern appears to be for prosecutors and courts. Importers of books, films, photographs, and other media of expression ordinarily protected by the First Amendment are described merely as importers of "goods". Left entirely unmentioned is the right of access of the public "to forms of the printed word which the State could not constitutionally suppress directly". *Smith v. California*, 361 U.S. 147, 154.

This case does not involve the importation of "goods"; it involves the importation of expression by adult citizens. There has been no ruling that the photographs involved in the case herein are obscene, and the material is presumptively entitled to constitutional protection under the First Amendment. See the dissenting opinion of Justice Marshall (*United States v. Reidel*, Slip Opinion, 2 and fn.) Suppression of First Amendment material for 74 days is, it is submitted, "undue" and plainly inconsistent with the guarantees of the First Amendment. It may be that the "Government" and the "lower federal courts" will not be inconvenienced by a 74-day time limitation, but the First Amendment is a limitation upon all arms of government and its principal concern is with the right of the public to the indispensable guarantees of freedom of speech and press. The majority opinion of the Court has overlooked, it is submitted, these significant considerations.

Moreover, having fixed a lengthy specific time limitation, the Court adds the following statement: "Of course, we do not now decide that these are the only constitutionally permissible time limits." (Slip Opinion,

10). Such a statement only compounds the vagueness and overbreadth of the existing statute and emphasizes the dangers of judicial legislation. The majority opinion states that the Court is "fully cognizant that Congress may re-enact it [§1305(a)] in a new form specifying new time limits, upon whose constitutionality we will then be required to pass" (Slip Opinion, 10). In the constitutional sense, and as a practical matter, it is submitted that a more appropriate result would be to declare the statute unconstitutional in its present form and leave it to Congress in the first place to decide the multifold policy questions involved in the enactment of a customs censorship law in the year 1971.

2.(a) The majority of the Court holds that search and seizure by customs officials of allegedly obscene materials may be upheld even when the purpose of importation is solely for private use. It appears that a "border" seizure of materials which an adult citizen is indisputably bringing home from abroad for his private consumption is without protection under the First Amendment and the decision of the Court in *Stanley*. As Justice Stewart stated: "If the Government can constitutionally take the book away from him as he passes through customs, then I do not understand the meaning of *Stanley v. Georgia*, 394 U.S. 557." (Slip Opinion). Appellees submit that if an adult citizen has a right to possess explicit sexual materials in his home, he has a right to acquire such materials both in this country and abroad and bring the materials home. The Government cannot present any legitimate justification for intruding upon such right. We deal here with expression, not gambling paraphernalia or other contraband. The ordinary rules with respect to "border" searches and seizures are inapplicable to material or-

dinarily protected by the First Amendment. *Smith v. California*, 361 U.S. 147; *Marcus v. Search Warrants of Property*, 367 U.S. 717; *Quantity of Copies of Books v. Kansas*, 378 U.S. 205.

Moreover, even if *Stanley* be reduced to no more than a decision involving "privacy", the majority opinion is difficult to comprehend, it is submitted. Clearly, "privacy" in the constitutional sense cannot be equated merely with an area known as "home". Privacy is more than a mere structural concept. The zone of privacy surrounds a man not only in his bedroom, but even in the street. It is a claim by an adult citizen to individual autonomy, dignity and integrity. It is a right to be left alone; a protection for adults in their beliefs, their thoughts, their emotions, and their sensations. Privacy does not simply mean privacy in one's home. The right of privacy includes the right to make choices, the right to select from competing ideas, entertainments, propaganda and philosophies, those which an adult citizen believes appropriate for the development of his own character and integrity.

(b) The majority opinion, pointing to the decision in *United States v. Reidel*, holds that §1305(a) is also valid as applied to the importation of explicit sexual materials where such materials are to be distributed solely to willing adults, not designed or intended for minors, and not obtrusively forced upon unwilling recipients. It is submitted that the majority opinion is inconsistent with the demands of the First Amendment and the fundamental constitutional principles enunciated in *Stanley*. The details of the arguments against the conclusions of the majority opinion in the case herein are set forth in appellee's petition for rehearing in *United States v. Reidel*. Appellees have never denied

the power of Government to prohibit, under appropriate standards, the dissemination of explicit sexual materials to minors or the obtrusive dissemination of such materials to unwilling recipients. The position of appellees is that *Roth* and the decisions which followed *Roth*, including *Stanley*, recognize a First Amendment right in adult citizens to read and view materials for their own intellectual and emotional satisfactions, and that such fundamental right includes the unfettered right to acquire the materials. The position of appellees is that the Government has never presented, and cannot present, a legitimate justification for the impairment of an adult citizen's right to obtain for his private consumption explicit sexual materials. The Government's interest in protecting minors can be amply maintained by the enactment of specific legislation. Adult citizens should not be reduced to reading and viewing in private contexts material solely fit for children.

Conclusion.

For all the foregoing reasons, the petition for rehearing should be granted and the judgment of the District Court affirmed.

Respectfully submitted,

STANLEY FLEISHMAN,
Attorney for Appellees.

SAM ROSENWEIN,
Of Counsel.

Attorney's Certificate of Good Faith.

The undersigned Stanley Fleishman, attorney for appellees, hereby certifies that the petition for rehearing filed in this cause is presented in good faith, that in his judgment the grounds of said petition are well taken and in conformance with the Court's Rules and that said petition for rehearing is not interposed for delay.

STANLEY FLEISHMAN,
Attorney for Appellees.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* THIRTY-SEVEN (37) PHOTOGRAPHS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

No. 133. Argued January 20, 1971—Decided May 3, 1971

Customs agents seized as obscene photographs possessed by claimant Luros when he returned to this country from Europe on October 24, 1969. Section 1305 (a) of 19 U. S. C., pursuant to which the agents acted, prohibits the importation of obscene material, provides for its seizure at any customs office and retention pending the judgment of the district court, and specifies that the collector of customs give information of the seizure to the district attorney, who shall institute forfeiture proceedings. The agents referred the matter to the United States Attorney, who brought forfeiture proceedings on November 6. Luros' answer denied that the photographs were obscene and counterclaimed that § 1305 (a) was unconstitutional. He asked for a three-judge court, which on November 20 was ordered to be convened. Following a hearing on January 9, 1970, the court on January 27 held § 1305 (a) unconstitutional on the grounds that the statute (1) failed to meet the procedural requirements of *Freedman v. Maryland*, 380 U. S. 1, and (2) was overly broad as including within its ban obscene material for private use, making it invalid under *Stanley v. Georgia*, 394 U. S. 557. *Held*: The judgment is reversed and the case remanded. Pp. 3- .

309 F. Supp. 36, reversed and remanded.

MR. JUSTICE WHITE, joined by THE CHIEF JUSTICE, MR. JUSTICE HARLAN, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, and MR. JUSTICE BLACKMUN, concluded in Part I that § 1305 (a) can be construed as requiring administrative and judicial action within specified time limits that will avoid the constitutional issue that would otherwise be presented by *Freedman*, *supra*. Pp. 3-11.

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Syllabus

(a) In *Freedman*, unlike the situation here, the statute failing to specify time limits was enacted pursuant to state authority and could not be given an authoritative construction by this Court to avoid the constitutional issue. P. 5.

(b) The reading into § 1305 (a) of the time limits required by *Freedman*, comports with the legislative purpose of the statute and furthers the policy of statutory construction to avoid a constitutional issue. Pp. 6-9.

(c) Section 1305 (a) may be constitutionally applied as construed to require intervals of no longer than 14 days from seizure of the goods to the institution of judicial proceedings for their forfeiture and no longer than 60 days from the filing of the action to final decision in the district court (absent claimant-induced delays). Pp. 9-10.

MR. JUSTICE WHITE, joined by THE CHIEF JUSTICE, MR. JUSTICE BRENNAN, and MR. JUSTICE BLACKMUN, concluded in Part II that Congress' constitutional power to remove obscene materials from the channels of commerce is unimpaired by this Court's decision in *Stanley, supra*. Cf. *United States v. Reidel, ante*, p. —. Pp. 11-13.

MR. JUSTICE HARLAN concluded that LAROS, who stipulated with the Government that the materials were imported for commercial purposes, lacked standing to challenge the statute for overbreadth on the ground that it applied to importation for private use. P. 2.

MR. JUSTICE STEWART, while agreeing that the First Amendment does not prevent the border seizure of obscene materials imported for commercial dissemination and that *Freedman v. Maryland*, 380 U. S. 1, imposes time limits for initiating forfeiture proceedings and completing the judicial obscenity determination, would not even intimate that the Government may lawfully seize literature intended for the importer's purely private use. P. 1.

WHITE, J., announced the Court's judgment and delivered an opinion in which (as to Part I) BURGER, C. J., and HARLAN, BRENNAN, STEWART, and BLACKMUN, JJ., joined, and in which (as to Part II), BURGER, C. J., and BRENNAN and BLACKMUN, JJ., joined. HARLAN, J., filed an opinion concurring in the judgment and concurring in Part I of WHITE, J.'s opinion. STEWART, J., filed an opinion concurring in the judgment and concurring in Part I of WHITE, J.'s opinion. BLACK, J., filed a dissenting opinion, in which DOUGLAS, J., joined. MARSHALL, J., filed a dissenting opinion, see No. 534, *United States v. Reidel*.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20548, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 133.—OCTOBER TERM, 1970

United States, Appellant, v. Thirty-Seven (37) Photographs, Milton Luros, Claimant.	}	On Appeal From the United States District Court for the Central District of California.
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[May 3, 1971]

MR. JUSTICE WHITE announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE BRENNAN, and MR. JUSTICE BLACKMUN join.*

When Milton Luros returned to the United States from Europe on October 24, 1969, he brought with him in his luggage the 37 photographs here involved. United States customs agents, acting pursuant to 19 U. S. C. § 1305 (a),¹

*MR. JUSTICE HARLAN and MR. JUSTICE STEWART also join Part I of the opinion.

¹ 19 U. S. C. § 1305 (a) provides in pertinent part:

"All persons are prohibited from importing into the United States from any foreign country . . . any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: . . . *Provided, further,* That the Secretary of the Treasury

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seized the photographs as obscene. They referred the matter to the United States Attorney, who on November 6 instituted proceedings in the United States District Court for forfeiture of the material. Lueros, as claimant, answered, denying the photographs were obscene and setting up a counterclaim alleging the unconstitutionality of § 1305 (a) on its face and as applied to him. He demanded that a three-judge court be convened to issue an injunction prayed for in the counterclaim. The parties stipulated a time for hearing the three-judge court motion. Formal order convening the court was entered on November 20. The parties then stipulated a briefing schedule expiring on December 16. The court ordered a hearing for January 9, also suggesting the parties stipulate facts, which they did. The stipulation revealed, among other things, that some or all of the

may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

"Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of the collector. Upon the seizure of such book or matter the collector shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

"In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits."

37 photographs were intended to be incorporated in a hard cover edition of *The Kama Sutra* of Vatsyayana, a widely distributed book candidly describing a large number of sexual positions. Hearing was held as scheduled on January 9, and on January 27 the three-judge court filed its judgment and opinion declaring § 1305 (a) unconstitutional and enjoining its enforcement against the 37 photographs, which were ordered returned to Luros. 309 F. Supp. 36 (CD Cal. 1970). The judgment of invalidity rested on two grounds: first, that the section failed to comply with the procedural requirements of *Freedman v. Maryland*, 380 U. S. 51 (1965), and second, that under *Stanley v. Georgia*, 394 U. S. 557 (1969), § 1305 (a) could not validly be applied to the seized material. We shall deal with each of these grounds separately.

I

In *Freedman v. Maryland*, *supra*, we struck down a state scheme for administrative licensing of motion pictures, holding "that, because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint." 380 U. S., at 58. To insure that a judicial determination occurs promptly so that administrative delay does not in itself become a form of censorship, we further held, (1) there must be assurance, "by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film"; (2) "[a]ny restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution"; and (3) ". . . the procedure must also assure a prompt final

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judicial decision" to minimize the impact of possibly erroneous administrative action. *Id.*, at 58-59.

Subsequently, we invalidated Chicago's motion picture censorship ordinance because it permitted an unduly long administrative procedure before the invocation of judicial action and also because the ordinance, although requiring prompt resort to the courts after administrative decision and an early hearing, did not assure "a prompt judicial decision of the question of the alleged obscenity of the film." *Teitel Film Corp. v. Cusack*, 390 U. S. 139, 141 (1968). So too in *Blount v. Rizzi*, 400 U. S. 410 (1971), we held unconstitutional certain provisions of the postal laws designed to control use of the mails for commerce in obscene materials. Under those laws an administrative order restricting use of the mails could become effective without judicial approval, the burden of obtaining prompt judicial review was placed upon the user of the mails rather than the Government, and the interim judicial order, which the Government was permitted, though not required to obtain pending completion of administrative action, was not limited to preserving the status quo for the shortest fixed period compatible with sound judicial administration.

As enacted by Congress, § 1305 (a) does not contain explicit time limits of the sort required by *Freedman*, *Teitel*, and *Blount*.² These cases do not, however, re-

² The United States urges that we find time limits in 19 U. S. C. §§ 1602 and 1604. Section 1602 provides that customs agents who seize goods must "report every such seizure immediately" to the collector of the district, while § 1604 provides that, once a case has been turned over to a United States Attorney, it shall be his duty "immediately to inquire into the facts" and "forthwith to cause the proper proceedings to be commenced and prosecuted, without delay," if he concludes judicial proceedings are appropriate. We need not decide, however, whether §§ 1602 and 1604 can properly be applied to cure the invalidity of § 1305 (a), for even if they were applicable, they would not provide adequate time limits and would not

quire that we pass upon the constitutionality of § 1305 (a), for it is possible to construe the section to bring it in harmony with constitutional requirements. It is true that we noted in *Blount* that "it is for Congress, not this Court, to rewrite the statute," 400 U. S., at 419, and that we similarly refused to rewrite Maryland's statute and Chicago's ordinance in *Freedman and Teitel*. On the other hand, we must remember that, "[w]hen the validity of an act of Congress is drawn in question, and . . . a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U. S. 22, 62 (1932). Accord, e. g., *Haynes v. United States*, 390 U. S. 85, 92 (1968) (dictum); *Schneider v. Smith*, 390 U. S. 17, 27 (1968); *United States v. Rumely*, 345 U. S. 41, 45 (1953); *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 348 (1936) (Brandeis, J., concurring). This cardinal principle did not govern *Freedman*, *Teitel*, and *Blount* only because the statutes there involved could not be construed so as to avoid all constitutional difficulties.

The obstacle in *Freedman* and *Teitel* was that the statutes were enacted pursuant to state rather than federal authority; while *Freedman* recognized that a statute which failed to specify time limits could be saved by judicial construction, it held that such construction had to be "authoritative," 380 U. S., at 59, and we lack

cure its invalidity. The two sections contain no specific time limits, nor do they require the collector to act promptly in referring a matter to the United States Attorney for prosecution. Another flaw is that § 1604 requires that, if the United States Attorney declines to prosecute, he must report the facts to the Secretary of the Treasury for his direction, but the Secretary is under no duty to act with speed. The final flaw is that neither section requires the District Court in which a case is commenced to come promptly to a final decision.

jurisdiction authoritatively to construe state legislation. Cf. *General Trading Co. v. State Tax Comm'n*, 322 U. S. 335, 337 (1944). In *Blount*, we were dealing with a federal statute and thus had power to give it an authoritative construction; salvation of that statute, however, would have required its complete rewriting in a manner inconsistent with the expressed intentions of some of its authors. For the statute at issue in *Blount* not only failed to specify time limits within which judicial proceedings must be instituted and completed; it also failed to give any authorization at all to the administrative agency, upon a determination that material was obscene, to seek judicial review. To have saved the statute we would thus have been required to give such authorization and to create mechanisms for carrying it into effect, and we would have had to do this in the face of legislative history indicating that the Postmaster General, when he had testified before Congress, had expressly sought to forestall judicial review pending completion of administrative proceedings. See 400 U. S., at 420 n. 8.

No such obstacles confront us in construing § 1305 (a). In fact, the reading into the section of the time limits required by *Freedman* is fully consistent with its legislative purpose. When the statute, which in its present form dates back to 1930, was first presented to the Senate, concern immediately arose that it did not provide for determinations of obscenity to be made by courts rather than administrative officers and that it did not require that judicial rulings be obtained promptly. In language strikingly parallel to that of the Court in *Freedman*, Senator Walsh protested against the "attempt to enact a law that would vest an administrative officer with power to take books and confiscate them and destroy them, because, in his judgment, they were obscene or indecent," and urged that the law "oblige him to go into court and file his information there, . . . and have

it determined in the usual way, the same as every other crime is determined." 72 Cong. Rec. 5419. Senator Wheeler likewise could not "conceive how any man" could "possibly object" to an amendment to the proposed legislation that required a customs officer, if he concluded material was obscene, to "turn . . . it over to the district attorney, and the district attorney prosecutes the man, and he has a right of trial by jury in that case." 71 Cong. Rec. 4466. Other Senators similarly indicated their aversion to censorship "by customs clerks and bureaucratic officials," *id.*, at 4437 (remarks of Senator Dill), preferring that determinations of obscenity should be left to courts and juries. See, e. g., *id.*, at 4433-4439, 4448, 4452-4459; 72 Cong. Rec. 5417-5423, 5492, 5497. Senators also expressed the concern later expressed in *Freedman* that judicial proceedings be commenced and concluded promptly. Speaking in favor of another amendment, Senator Pittman noted that a customs officer seizing obscene matter "should *immediately* report to the nearest United States district attorney having authority under the law to proceed to confiscate" *Id.*, at 5420 (emphasis added). Commenting on an early draft of another amendment that was ultimately adopted, Senator Swanson noted that officers would be required to go to court "immediately." *Id.*, at 5422. Then he added:

"The *minute* there is a suspicion on the part of a revenue or customs officer that a certain book is improper to be admitted into this country, he presents the matter to the district court, and there will be a *prompt* determination of the matter by a decision of that court." *Id.*, at 5424 (emphasis added).

Before it finally emerged from Congress, § 1305 (a) was amended in response to objections of the sort voiced above: it thus reflects the same policy considerations that induced this Court to hold in *Freedman* that censors